1 August 2005

Original: English

Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council

Draft report

I. Introduction

1. In its resolution 48/26 of 3 December 1993, the General Assembly decided to establish an open-ended working group to consider all aspects of the question of increase in the membership of the Security Council and other matters related to the Council.

2. The Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council began its deliberations in January 1994. The Working Group submitted progress reports to the General Assembly at its forty-eighth to fifty-eighth sessions. At those sessions, the Assembly extended the mandate of the Working Group.

3. On 23 November 1998, the General Assembly adopted resolution 53/30 in connection with the agenda item of the Working Group entitled "Majority required for taking decisions on Security Council reform".

4. In the United Nations Millennium Declaration, Heads of State and Government resolved, in respect of ongoing deliberations on Security Council reform, to intensify their efforts to achieve comprehensive reform of the Council in all its aspects (see General Assembly resolution 55/2, annex, para. 30).

5. Following the deliberations of the Working Group, the General Assembly, in its decision 58/572, decided that the Group should continue its work and should submit a report to the Assembly before the end of the fifty-ninth session, including any agreed recommendations. The present report is submitted pursuant to that decision.

05-44461 (E)

II. Proceedings of the Working Group during the fifty-ninth session of the General Assembly

A. Organizational matters

6. The President of the General Assembly, Jean Ping (Gabon), served as Chairperson of the Working Group. Ambassadors Paulette Bethel (Bahamas) and Christian Wenaweser (Liechtenstein) served as Vice-Chairpersons.

7. Meetings of the Working Group were chaired, when the Chairperson was not present, by one of the Vice-Chairpersons.

8. During the fifty-ninth session of the General Assembly, the Working Group held ____ formal meetings, as well as four informal meetings.

B. Working methods of the Working Group

9. In previous sessions, the Working Group considered oral and written proposals and/or position papers presented by delegations. Those proposals were set out in two clusters, cluster I, concerning increase in membership and related matters, and cluster II, concerning the working methods of the Security Council and transparency of its work. The Working Group considered the two clusters of proposals in tandem. The discussion of the two clusters was summarized in conference room papers, the most recent versions of which are contained in annexes VI (cluster I) and VII (cluster II) of the report of the Working Group to the General Assembly at its fifty-seventh session.[1]

10. Over more than 10 years of deliberations, the Working Group has reached provisional agreement on a large number of issues under cluster II; however, substantial divergence of views remains on other issues, including issues in cluster I.

11. The Chairperson, pursuant to the practice started at the fifty-eighth session, proposed to hold a focused discussion on the following issues: (a) accountability, in particular the relationship between the Security Council and the General Assembly, including reports of the Council to the Assembly; (b) the relationship between the Security Council and other principal organs of the United Nations; (c) consultations with troop-contributing countries; (d) questions concerning the work of sanctions committees, including Article 50 of the Charter of the United Nations; (e) subsidiary organs of the Security Council; and (f) the question of the use of the veto (see annex I).

C. Meetings and informal consultations of the Working Group

12. At its 1st meeting, on 7 February 2005, the Working Group endorsed the appointment of two Vice-Chairpersons.

13. At its 2nd meeting, on 14 February, the Chairperson introduced a list of six issues to be discussed by the Working Group.

14. The Working Group then held four informal meetings to discuss the list of issues proposed by the Chairperson, from 14 to 16 February. An informal summary of the discussion was later prepared by the Bureau and distributed to delegations.

15. At its 3rd to 8th meetings, on 25 and 28 February, and 2, 9 and 22 March, the Working Group further discussed the six issues in relation to the informal summary prepared by the Bureau (see annex II).

D. Adoption of the report of the Working Group

16. At its meeting, on 2005, the Working Group considered and adopted the present report for consideration by the General Assembly at its fifty-ninth session.

III. Recommendations

[*to be completed*]

Notes

[1] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 47* and corrigendum (A/57/47 and Corr.1).

Annex I

Letter by the Chairman of the Working Group dated 10 February 2005

Further to the organizational meeting of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and other Matters related to the Security Council, held on 7 February 2005, I am pleased to invite you to participate in the 2nd meeting of the Open-ended Working Group scheduled on Monday, 14 February 2005, at 10 a.m. in Conference Room 2. The meeting will be followed immediately by informal consultations, which are scheduled for Tuesday, 15 and Wednesday, 16 February 2005.

Pursuant to the consultations carried out by members of the Bureau, the Working Group will start its deliberations on cluster II issues. In order to enable the Working Group to hold a focused discussion, I am proposing the following issues to be taken up by the Working Group:

(a) Accountability, in particular the relationship between the Security Council and the General Assembly, including reports of the Council to the Assembly;

(b) The relationship between the Security Council and other principal organs of the United Nations;

(c) Consultations with troop-contributing countries;

(d) Questions concerning the work of sanctions committees, including Article 50 of the Charter of the United Nations;

(e) Subsidiary organs of the Security Council;

(f) The question of the use of the veto.

This tentative agenda is based upon the work conducted previously by the Open-ended Working Group and is suggested with the understanding that the Group can also take up other issues.

Annex II

Informal summary of the Bureau on the Open-ended Working Group discussions on cluster II issues

Introduction

The Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and other Matters related to the Security Council met in one formal and four informal sessions from Monday, 14 February, to Wednesday, 16 February 2005. During the informal sessions the Working Group took up the following six cluster II issues, as proposed by the President of the General Assembly in his letter of 10 February:

(a) Accountability, in particular the relationship between the Security Council and the General Assembly, including reports of the Council to the Assembly;

(b) The relationship between the Security Council and other principal organs of the United Nations;

(c) Consultations with troop-contributing countries;

(d) Questions concerning the work of sanctions committees, including Article 50 of the Charter of the United Nations;

(e) Subsidiary organs of the Security Council;

(f) The question of the use of the veto.

General comments

Delegations generally welcomed the discussion of cluster II issues, with some expressing the view that the report of the High-level Panel on Threats, Challenges and Change (A/59/565) had given insufficient attention to those aspects of Security Council reform. While some delegations offered the view that cluster II issues were for many States a more important aspect of reform than cluster I issues, the view was also expressed that the Open-ended Working Group should also consider cluster I issues in the course of its work. There was general agreement that the continued mandate of the Working Group encompassed the consideration of both cluster I and cluster II issues.

Delegations that took the floor in the course of the informal discussions reiterated and reaffirmed many of the recommendations/comments previously made on the cluster II topics. A number of delegations therefore proposed that a streamlined list of outstanding recommendations be drafted, based on annex V to the report of the Open-ended Working Group to the General Assembly at its fifty-seventh session,[a] for use in future deliberations of the Working Group on cluster II topics. It was noted that while a number of measures contained in that annex had been agreed to in principle, the implementation of those measures had been uneven,

[a] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 47* and corrigendum (A/57/47 and Corr.1).

since some of them had in fact been applied in practice, while others had not. Some delegations agreed that the Open-ended Working Group should focus its attention on those measures that had not been implemented, while others were of the view that those which can be considered to have been implemented were equally important to mention, since they had not been incorporated into the provisional rules of procedure of the Security Council and their application was therefore not guaranteed. Some delegations also emphasized the need to continue working on those measures which had not been agreed on in the past. It was also noted that the topics suggested for discussion by the Bureau did not cover all the material contained in annex V, and it was understood that those topics also remained under the consideration of the Open-ended Working Group. Some delegations were therefore of the view that a compilation of consensual measures should be drafted in order for such a list to be fed into a comprehensive proposal on Security Council reform. Others, however, maintained that all recommended measures, both from past discussions as well as new ones, needed to be looked at and reviewed in detail.

I. Accountability, in particular the relationship between the Security Council and the General Assembly, including reports of the Council to the Assembly

There was a widespread view that the Security Council is accountable vis-à-vis the General Assembly by virtue of Article 24, paragraph 1, of the Charter. Some delegations maintained, however, that there is no hierarchy among the principal organs of the United Nations and that the relationship between the organs is clearly regulated in the relevant Charter provisions, especially those relating to the reporting of the Security Council to the General Assembly.

A number of delegations expressed the view that the annual reports of the Security Council to the General Assembly should be factual, comprehensive, substantive and analytical; should include an assessment of the Council's activities and performance; and should include information on requests received under Article 50 and on the responses of the Council thereto. The view was also expressed that, while a more comprehensive and substantive report was desirable, it was unrealistic to ask for the report to be more analytical, since such analytical parts would have to be agreed to by all members of the Council and thus be subject to negotiations that would entail a lengthy process. It was also pointed out that the report already contained an analytical introductory part. Consideration of the Security Council report by the General Assembly should, according to some delegations, include the active participation of the Council members and the opportunity for non-members to put questions to them. Some delegations also expressed the view that special reports of the Council to the Assembly should be forthcoming, in accordance with Article 15, paragraph 1, and Article 24, paragraph 3, of the Charter.

Several delegations noted that open debates of the Security Council were an important means of enhancing interaction between the Council and the wider membership and that such open debates should be held more frequently; should be announced with sufficient lead time so as to allow for the full participation of all non-member States; should have time limits for interventions that apply to all countries; should allow non-members to speak first so that Council members might benefit from those views; and should allow for input by non-members into the

decision-making processes of the Council. In a similar vein, it was stressed that closed meetings and informal consultations should be kept to a minimum and as the exception they were meant to be.

As a means of keeping the larger membership informed of Security Council activities and deliberations, some delegations stated that it was important that Council briefings to non-members be frequent, thorough and qualitative; that the reports of the Secretary-General to the Council be made available to the general membership in a timely manner; that the Council President's wrap-up sessions be resumed and be substantive and analytical in content; and that the President's monthly assessments be comprehensive and analytical in content and issued in a timely manner. In that connection, it was pointed out that the presidency of the Security Council for the month of March had scheduled such a wrap-up session for the end of the month. The view was expressed that open meetings should be convened, as appropriate, to afford non-members of the Council the opportunity to receive informative briefings from the Secretariat and special envoys and representatives of the Secretary-General.

Expressing concern about the gradual encroachment of the Security Council on the powers and mandate of the General Assembly, some delegations expressed the view that the Council should refrain from addressing thematic issues, as those fell within the purview of the Assembly or the Economic and Social Council; that there should be a clear delineation of the respective fields of competence of the Assembly and the Council, particularly in the areas of thematic issues and legislative work; and that regular consultations between the Presidents of the Security Council, the General Assembly and the Economic and Social Council should be institutionalized. The view was also expressed that Article 31 of the Charter should be interpreted in such a manner as to allow non-members to participate in informal consultations. A number of delegations also expressed the view that, consistent with Article 11, paragraph 2, of the Charter, the Council should take into account recommendations made by the Assembly on matters of international peace and security. Some delegations held the opinion that the Security Council was making excessive use of Chapter VII of the Charter, which should be invoked only as a last resort and that it should instead make more frequent use of Chapters VI and VIII instead. The view was also expressed that the Council was resorting too quickly to Articles 41 and 42 of the Charter.

Many delegations were of the opinion that the provisional rules of procedure of the Council should be modified, as appropriate, formalized and adopted.

The view was expressed that the periodic elections of members of the Security Council was an important means of enhancing accountability of the Council vis-à-vis the General Assembly.

II. Relationship between the Security Council and other principal organs of the United Nations

There were few specific comments regarding the relationship between the Security Council and other principal organs of the United Nations, but there seemed to be general agreement that the relationship between the Security Council and the Economic and Social Council in particular should be enhanced. Several delegations

made reference, in that respect, to the recommendation of the High-level Panel regarding the establishment of a Peacebuilding Commission. That recommendation was commented on in a favourable manner, while most delegations expressed the view that a Peacebuilding Commission should not be placed under the sole authority of the Security Council. Rather, they saw an exclusive or combined role also for the Economic and Social Council and the General Assembly. Delegations also mentioned the desirability of the Security Council requesting advisory opinions from the International Court of Justice on legal questions where necessary.

III. Consultations with troop-contributing countries

Delegations reiterated a number of recommendations concerning Security Council consultations with troop-contributing countries and expressed the wish for stronger involvement of such countries in the decision-making processes of the Council, including at the early stages of mission planning. In that vein, a number of delegations concurred that meetings between the Council and countries contributing troops and civilian police, both currently and in future, should be held regularly before and during the decision-making process on the establishment, conduct, review and termination of a peacekeeping operation, including the extension and change of mandates, as well as specific operational issues, and that in the case of emergencies such meetings should be convened promptly.

Furthermore, some delegations expressed the view that meetings between the Council, troop-contributing countries and other countries contributing to a peacekeeping operation, including important financial and political contributors, should be convened so as to allow those countries to adequately consider the reports of the Secretary-General, which should be distributed in a timely manner. The view was also expressed that countries directly concerned and/or affected by a peacekeeping operation should, in specific circumstances and where appropriate, be invited to those meetings. It was also the view of some delegations that mission-specific core groups should be established under Article 29 of the Charter.

In this context, a few delegations were of the view that when force is authorized, Articles 43 and 44 of the Charter should be fully implemented.

Given that the majority of troop-contributing countries are non-members of the Council, there was a call for the revitalization of the Working Group of the Whole on United Nations Peacekeeping Operations. It was also noted that interaction between troop-contributing countries and Secretariat bodies involved in peacekeeping operations, such as the Office for the Coordination of Humanitarian Affairs, should be encouraged.

IV. Questions concerning the work of sanctions committees, including Article 50 of the Charter

Some delegations expressed concern at the imposition of sanctions by the Security Council, making it clear that sanctions should be imposed only as a last resort and after all means available to the Council under Chapter VI of the Charter had been exhausted. They also held the view that the Council made excessive or improper use of Chapter VII. Other delegations held the view that sanctions were a

legitimate and necessary tool for the enforcement by the Council of measures to maintain international peace and security. There was wide agreement that sanctions should be designed in such a manner that their long-term effects are considered and their effects on civilian populations are minimized or avoided on the basis of an assessment of humanitarian impact, that they should be subject to periodic review and that the measures imposed be conducive to achieving the intended goals. Several speakers expressed support for the progress the Security Council had made in its sanctions regimes over the past few years and supported the concept of targeted sanctions. At the same time, they underlined the need for improved mechanisms for implementation and monitoring (see A/59/565, paras. 178-182). Several delegations held the view that sanctions committees should engage in increased consultations with targeted States as well as with other States affected by the imposition of sanctions.

The view was expressed that the Security Council should undertake measures providing for more effective implementation of the right contained in Article 50 of the Charter for any State, whether a member of the United Nations or not, to consult the Council with regard to problems arising from its implementation of preventive or enforcement measures imposed by the Council. The view was expressed that the Council should take fully into account those sections of annex II to General Assembly resolution 51/242 of 15 September 1997, entitled "Question of sanctions imposed by the United Nations", that are relevant to the application of Article 50 of the Charter and that relate to the working methods of the Council and the transparency of its work. In that connection, the view was expressed that the countries especially affected by sanctions regimes, including target countries, should be given access to sanctions committees to explain their situation directly related to the implementation of sanctions. Some delegations expressed the view that sanctions committees should establish procedures to review the cases of those claiming to have been incorrectly placed or retained on such lists (see ibid., para. 182). However, it was also noted that such procedures already existed. A proposal was made that the Sixth Committee of the General Assembly establish a Working Group to consider the question of sanctions in all its aspects.

V. Subsidiary organs of the Security Council

The view was expressed that there was a proliferation of subsidiary organs of the Security Council, with their various support mechanisms, which should be curtailed and that the existing subsidiary organs should have more interaction with the general membership and non-members of the Council, providing adequate and timely information on their activities. Some delegations also expressed the view that meetings of subsidiary organs should be more transparent and, when appropriate, open to non-members. It was also suggested by some delegations that the chairmen of the subsidiary organs should, as appropriate, give substantive and detailed briefings on their proceedings to non-members and should make the relevant documents available to non-members. Several delegations concurred that the membership of subsidiary organs of the Council should be extended to include non-members of the Council.

Also under this topic, many delegations welcomed the proposed establishment of a Peacebuilding Commission, but did not agree with sole Security Council oversight of the body, as suggested in the report of the High-level Panel on Threats,

Challenges and Change (A59/565). Some delegations felt that the General Assembly should have oversight of the Commission, while others suggested that its stewardship might be jointly shared by the General Assembly, the Security Council and the Economic and Social Council given the wide range of issues that will fall within its ambit.

VI. The question of the use of the veto

There were different views as to the relevance of this topic for the discussions of cluster II: some delegations stated the view that this question had an exclusive relevance for cluster I and should thus not be discussed under cluster II. Others maintained that the use of the veto was part of the existing working methods of the Security Council and should therefore be addressed under cluster II. Those of the view that this topic indeed belonged to cluster II expressed the view that the veto should be limited in its use with a view to its eventual elimination. Other delegations stated that the elimination of the veto was not a realistic proposition. The view was also expressed that the veto should be used with utmost restraint and that its use should be limited to actions taken under Chapter VII of the Charter. It was also suggested that the use of the veto be changed in such a manner that it could be overruled either by a specific number of positive votes of Security Council members or by a two-thirds majority of the General Assembly. It was also suggested that, if a veto is used, an explanation of the reasons for the veto should be given to the Assembly. Some delegations commented on the recommendation made by the High-level Panel that a system of "indicative voting" should be introduced, whereby members of the Council could call for a public indication of positions on a proposed action (ibid., para. 257), which to their mind required further discussion. Reference was also made to the recommendation of the High-level Panel that permanent members should pledge themselves, in their individual capacities, to refrain from the use of the veto in cases of genocide and large-scale human rights abuses (ibid., para. 256). The view was also expressed, however, that unilateral commitments from permanent members on the use of the veto were, generally speaking, not a viable option to address the issue.